

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

14 JAN 1974

Honorable Roy L. Ash, Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This submits proposed legislation in accordance with Office of Management and Budget Circular No. A-19, revised. Enclosed are six copies of a draft bill, "To amend the National Security Act of 1947, as amended." Also enclosed are copies of a sectional analysis, a comparison with existing law, cost analysis, and drafts of the letters of transmittal to the President of the Senate and the Speaker of the House of Representatives.

The proposed legislation amends Section 102 of the National Security Act of 1947 by adding a new subsection (g) defining "information relating to intelligence sources and methods" as a separate category of classified information to be accorded statutory recognition and protection similar to that provided "Restricted Data" under the Atomic Energy Act. The proposed law grants the Director of Central Intelligence the authority to issue rules and regulations limiting the dissemination of information related to intelligence sources and methods of collection and provides for a criminal penalty for the disclosure of such information to unauthorized persons and for injunctive relief.

The continued effectiveness of the United States foreign intelligence collection effort is dependent upon the adequate protection of the intelligence sources and methods involved. In recognition of this, Congress, under Section 102(d)(3) of the National Security Act of 1947, made the Director of Central Intelligence responsible for the protection of intelligence sources and methods from unauthorized disclosure. Unfortunately, there is no statutory authority to implement this responsibility. In recent times, serious damage to our foreign intelligence effort has resulted from unauthorized disclosures of information related to intelligence sources and methods. The circumstances of these disclosures precluded punitive criminal action.

In most cases, existing law is ineffective in preventing disclosures of information relating to intelligence sources and methods. Except in cases involving communications intelligence, no criminal action lies against persons disclosing classified information without authorization unless it is furnished to a representative of a foreign power or the disclosure is made with intent to harm the United States or aid a foreign power. It also requires the revelation in open court of confirming or additional information of such a nature that the potential damage to the national security precludes prosecution. Furthermore, prevention of disclosure in order to avoid serious damage to the intelligence collection effort better serves the national interest than punishment after disclosure; however, there is no existing statutory authority for injunctive relief.

The greatest risks of disclosure come from persons who are entrusted with information relating to intelligence sources and methods through a privity of relationship with the U.S. Government. When such persons, without authorization, disclose information to representatives of the public media, it receives wide publication, and, of course, is revealed to the foreign nations which may be the subject of or otherwise involved in the intelligence activities, leading to their termination as well as political or diplomatic difficulties.

A fully effective security program might require legislation to encompass the willful disclosures of classified information by all persons knowing or having reason to know of its sensitivity. However, in order to limit the free circulation of information in our American society only to the degree essential to the conduct of a national foreign intelligence effort, this legislation proposes that prosecution be provided only for persons who have authorized possession of such information or acquire it through a privity of relationship to the Government. Other persons collaterally involved in any offense would not be subject to prosecution. Further, disclosures to Congress upon lawful demand would be expressly excluded from the provisions of the proposed law.

In order to provide adequate safeguards to an accused, while at the same time preventing damaging disclosures during the course of prosecution, subsection (g)(5) provides for an in camera determination by the court of the reasonableness of the designation for limited distribution of the information upon which prosecution is brought.

Finally, in order to prevent disclosures, subsection (g)(6) provides statutory authority for the enjoinder of threatened acts in violation of the subsection upon a showing by the Director of Central Intelligence that any person is about to commit a violation of the subsection or any rule and regulation issued thereunder.

Your advice is requested as to whether there is any objection to the submission of the proposed legislation to the Congress from the standpoint of the Administration's program.

Sincerely,


W. E. Colby
Director

Enclosures

cc: Chairman and Members of PFIAB
Chairman and Members of NSCIC
Members of USIB

TAB

A BILL

To amend the National Security Act of 1947, as amended, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of
2 the United States of America in Congress assembled, That
3 Section 102 of the National Security Act of 1947, as amended,
4 (50 U.S.C.A 403) is further amended by adding the following
5 new subsection (g):

6 (g) In order further to implement the proviso of section
7 102(d)(3) of this Act that the Director of Central Intelligence shall
8 be responsible for protecting intelligence sources and methods as
9 defined in paragraph (2) below from unauthorized disclosure--

10 (1) Whoever, being or having been in duly
11 authorized possession or control of information relating
12 to intelligence sources and methods, or whoever, being
13 or having been an officer or employee of the United States,
14 or member of the Armed Services of the United States,
15 or being or having been a contractor of the United States
16 Government, or an employee of a contractor of the
17 United States Government, and in the course of such
18 relationship becomes possessed of information relating
19 to intelligence sources and methods, knowingly

1 communicates such information to a person not authorized
2 to receive it shall be fined not more than \$10,000 or
3 imprisoned not more than ten years, or both;

4 (2) For the purposes of this subsection, the
5 term "information relating to intelligence sources and
6 methods" means information relating to sources,
7 methods or techniques concerning foreign intelligence
8 which for reasons of national security or in the interest
9 of the foreign relations of the United States has been
10 specifically designated pursuant to rules and regulations
11 prescribed by the Director of Central Intelligence for
12 limited or restricted dissemination or distribution;

13 (3) A person not authorized to receive information
14 relating to intelligence sources and methods is not subject
15 to prosecution as an accomplice within the meaning of
16 sections 2 and 3 of Title 18, United States Code, or to
17 prosecution for conspiracy to commit an offense under
18 this subsection. This immunity shall not extend to those
19 persons described in paragraph (1) above who become
20 possessed of information relating to intelligence sources
21 and methods in the course of their relationship with the
22 United States Government;

1 (4) This subsection shall not prohibit the furnishing,
2 upon lawful demand, of information to any regularly
3 constituted committee of the Senate or the House of
4 Representatives of the United States, or a joint com-
5 mittee thereof;

6 (5) In any judicial proceeding hereunder, the court may
7 review, in camera, information designated as relating
8 to intelligence sources and methods for the purpose of
9 determining the reasonableness of the designation
10 pursuant to paragraph (2) above and the court shall not
11 invalidate the designation unless it determines that the
12 designation was arbitrary and capricious;

13 (6) Whenever in the judgment of the Director of
14 Central Intelligence any person has engaged or is about
15 to engage in any acts or practices which constitute, or
16 will constitute, a violation of this subsection, or any
17 rule or regulation issued thereunder, the Attorney
18 General on behalf of the United States may make applica-
19 tion to the appropriate court for an order enjoining such
20 acts or practices, or for an order enforcing compliance
21 with the provisions of this subsection or any rule or

1 regulation issued thereunder, and upon a showing by the
2 Director of Central Intelligence that such person has
3 engaged or is about to engage in any such acts or practices,
4 a permanent or temporary injunction, restraining order,
5 or other order may be granted.

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SECTIONAL ANALYSIS AND EXPLANATION

The draft bill by adding a new subsection (g) to the National Security Act of 1947 further implements a proviso of that Act imposing a duty upon the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. Where possible, the new subsection is based upon existing provisions of law specifically 18 U.S.C. 798 (relating to communication intelligence) and 42 U.S.C. 2204 et seq. (relating to atomic energy Restricted Data).

Paragraph (1) of the new subsection identifies the special and limited class of individuals having privity of access to the sensitive information defined in paragraph (2) below and proscribes their culpable communication of such information to an unauthorized recipient.

Paragraph (2) of the new subsection defines the special category of information relating to intelligence sources and methods which is subject to the new provision. It also authorizes the Director to provide for the appropriate designation of such information.

Paragraph (3) of the new subsection assures that only the special and limited class of individuals identified under paragraph (1) above will be subject to prosecution as a result of the violation of the new subsection. This is in keeping with the intent that the new provision penalizes as unlawful only the conduct of those whose access to the designated information is dependent upon understandings arising out of a relationship involving

trust and confidence. Collateral prosecution related to the violation of any other provision of law, however, is not vitiated by this paragraph.

Paragraph (4) of the new subsection makes it clear that the new provision neither inhibits nor impairs, in any way, the lawful communication of any information to the Congress.

Paragraph (5) of the new subsection provides for judicial review of the reasonableness of any designation made pursuant to paragraph (2) above. This will ensure that the designation is not applied arbitrarily or capriciously. It provides that the judicial review will be conducted in camera to preclude the disclosure of sensitive information in open court and avoid aggravating the damage to intelligence sources and methods.

Paragraph (6) of the new subsection permits the Attorney General to petition a court for the injunction of any act which the Director believes will violate any provision of the new subsection. This authority is intended to provide prompt judicial action to avoid damage to the U.S. foreign intelligence effort in circumstances where punitive criminal action alone, being necessarily ex post facto, may be inadequate in achieving the underlying objective of the legislation which is to protect intelligence sources, methods and techniques from unauthorized disclosure.

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CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman; new matter is underscored.

NATIONAL SECURITY ACT OF 1947
as amended
(50 U.S.C.A. 403)

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TITLE I--COORDINATION FOR NATIONAL SECURITY

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CENTRAL INTELLIGENCE AGENCY

SEC. 102

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(g) In order further to implement the proviso of section 102(d)(3) of this Act that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods as defined in paragraph (2) below from unauthorized disclosure--

(1) Whoever, being or having been in duly authorized possession or control of information relating to intelligence sources and methods, or whoever, being or having been an officer or employee of the United States, or member of the Armed Services of the United States, or being or having been a contractor of the United States Government, or an employee of a contractor of the United States Government, and in the course of such relationship becomes possessed of information relating to intelligence sources and methods, knowingly communicates such information to a person not authorized to receive it shall be fined not more than \$10,000 or imprisoned not more than ten years, or both;

(2) For the purposes of this subsection, the term "information relating to intelligence sources and methods" means information relating to sources, methods or techniques concerning foreign intelligence which for reasons of national security or in the interest of the foreign relations of the United States has been specifically designated pursuant to rules and regulations prescribed by the Director of Central Intelligence for limited or restricted dissemination or distribution;

(3) A person not authorized to receive information relating to intelligence sources and methods is not subject to prosecution as an accomplice within the meaning of sections 2 and 3 of Title 18, United States Code, or to prosecution for conspiracy to commit an offense under this subsection. This immunity shall not extend to those persons described in paragraph (1) above who become possessed of information relating to intelligence sources and methods in the course of their relationship with the United States Government;

(4) This subsection shall not prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or the House of Representatives of the United States, or a joint committee thereof;

(5) In any judicial proceeding hereunder, the court may review, in camera, information designated as relating to intelligence sources and methods for the purpose of determining the reasonableness of the designation pursuant to paragraph (2) above and the court shall not invalidate the designation unless it determines that the designation was arbitrary and capricious;

(6) Whenever in the judgment of the Director of Central Intelligence any person has engaged or is about to engage in any acts or practices which constitute, or will constitute, a violation of this subsection, or any rule or regulation issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with the provisions of this subsection or any rule or

regulation issued thereunder, and upon a showing by the
Director of Central Intelligence that such person has
engaged or is about to engage in any such acts or practices,
a permanent or temporary injunction, restraining order,
or other order may be granted.

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

DRAFT

The Honorable Carl Albert
Speaker of the House of Representatives
Washington, D. C. 20515

The Honorable Gerald R. Ford
President of the Senate
United States Senate
Washington, D. C. 20510

Dear Mr. Speaker:

This letter transmits for the consideration of the Congress a draft bill to amend the National Security Act of 1947, as amended.

Over the years, serious damages to our foreign intelligence effort have resulted from the unauthorized disclosure of classified information related to intelligence sources and methods. In most cases, the sources of these leaks have been persons who were made privy to sensitive information by virtue of their relationship of trust to the United States Government. Deliberate breach of this relationship of trust to the detriment of the United States Government is subject only to partial legal sanction. In most instances prosecution lies only if the offender makes the unauthorized disclosure to a representative of a foreign power or the prosecution must show an intent to harm the U.S. or aid a foreign power. Moreover, in many instances the requirement to reveal in open court the significance of information disclosed is a deterrent to prosecution.

Presently, Section 102(d)(3) of the National Security Act of 1947, as amended, places a responsibility on the Director of Central Intelligence to protect intelligence sources and methods. However no legal sanctions are provided for him to implement this responsibility. The legislation proposed in this draft bill would close this gap to the limited degree necessary to carry out a foreign intelligence program but at the same time give full recognition to our American standards of maximum feasible freedom of information and protection of individual rights.

The proposed legislation grants to the Director of Central Intelligence the authority to issue rules and regulations limiting the dissemination of information related to intelligence sources and methods of collection and provides criminal penalty for the disclosure of such information to unauthorized persons.

The proposed legislation is limited to individuals entrusted with the sensitive information described in the legislation by virtue of their position as officer, employee, contractor, or other special relationship with the U.S. Government. Strictly from the standpoint of protecting the information, this legislation ideally would encompass willful disclosure to unauthorized persons by any person knowing, or having reason to know of its sensitivity. However, our American tradition would not permit a law sufficiently broad to apply to the media or other private citizens. Hence, application of the proposed legislation is limited to those given access to the information by virtue of their relationship to the Government.

In order to provide adequate safeguards to an accused, to prevent damaging disclosures during the course of prosecution, and to prevent prosecution with respect to information unreasonably designated, the legislation provides for in camera review by the court of the information disclosed to review the reasonableness of the designation for limited distribution. The legislation also provides for injunctive relief in those instances where unauthorized disclosure is threatened and serious damage to the intelligence collection effort would result.

We would appreciate early and favorable consideration of the proposed bill. The Office of Management and Budget has advised that there is no objection to presenting the proposed bill to the Congress from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

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COST ANALYSIS

This legislation does not involve any measurable costs. Any court costs to the Government would be more than offset by the savings that would result if the legislation deters the compromise of sensitive sources and methods which, if compromised, would require extensive and costly counteractions to mitigate the damage and to offset the advantages to the opposition.